

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SUNDANCE SERVICES, INC.,

Plaintiff,

vs.

Civ. No. 10-110 JP/CEG

DONNA ROACH, KELLY ROACH,
MICHAEL PATTERSON,
ANTHONY PENDER,
TERRY GARCIA, JOANN PENDER,
SYLVANNA VELASQUEZ, a/k/a
SYLVANNA TRUJILLO,
DARIO VELASQUEZ,
RICHARD VELASQUEZ, JR.,
RICHARD VELASQUEZ, SR.,
SYLVIA VELASQUEZ, KATY VELASQUEZ,
RICHARD SHORT, MAX VELAZQUEZ, and
DOUBLE T FASHIONS,

Defendants.

And

DONNA ROACH and KELLY ROACH,

Counterclaimants,

vs.

SUNDANCE SERVICES, INC.,

Counterdefendant.

And

DONNA ROACH and KELLY ROACH,

Third-Party Plaintiffs,

vs.

MOHAMED HANIF MUSSANI, and
PERSEMPRE INVESTMENTS, LLC,

Third-Party Defendants.

MEMORANDUM OPINION AND ORDER

On January 26, 2011, Plaintiff/Counterdefendant Sundance Services, Inc. (Sundance) filed Plaintiff Sundance Services, Inc.'s Motion to Dismiss Counterclaimants Donna Roach and Kelly Roach's Second Cause of Action for Failure to State a Claim (Doc. No. 103) (Motion to Dismiss). Sundance indicates in the Motion to Dismiss that Defendants/Counterclaimants/Third-Party Plaintiffs Donna Roach and Kelly Roach (the Roaches) oppose the Motion to Dismiss which seeks to dismiss the Second Cause of Action of the Roaches' Answer and Counterclaim (Doc. No. 69). The Roaches, however, have not filed a response to the Motion to Dismiss as required by the Local Rules. *See* D.N.M. LR-Cv 7.4(a) ("Except as otherwise provided for in the Fed. R. Civ. P., a response must be served and filed within fourteen (14) days after service of the motion...."). Under the Local Rules, "[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M. LR-Cv 7.1(b). Hence, the Court concludes that the Roaches' inaction constitutes consent to grant the Motion to Dismiss and the Court will dismiss the Second Cause of Action.

IT IS ORDERED that:

1. Plaintiff Sundance Services, Inc.'s Motion to Dismiss Counterclaimants Donna Roach and Kelly Roach's Second Cause of Action for Failure to State a Claim (Doc. No. 103) is granted; and

2. the Second Cause of Action of the Roaches' Answer and Counterclaim (Doc. No. 69)
will be dismissed.



SENIOR UNITED STATES DISTRICT JUDGE